

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

MILTON MUSA PACHECO,

Plaintiff,

-against-

9:06-CV-0020
(LEK/GHL)

CURTIS DROWN, *et al.*,

Defendant.

DECISION AND ORDER

Currently before the Court is a Motion for Reconsideration, filed by Plaintiff Milton Musa Pacheco ("Plaintiff"), to an Order issued by Judge Lawrence E. Kahn on December 17, 2007. Plaintiff's Motion for Reconsideration (Dkt. No. 63); Judge Kahn Order (Dkt. No. 62).

I. Background

Plaintiff, proceeding *pro-se*, submitted an Objection to an Order issued by Judge George H. Lowe that required the Plaintiff to submit to a deposition by the Defendants. Objection (Dkt. No. 45); Judge Lowe Order (Dkt. No. 39). The Plaintiff's claimed in the Objection that two of the main defendants had not yet been served, and that the Plaintiff did not want to suffer prejudice. While the Objection was pending, the remaining two defendants were served, and the Plaintiff gave his deposition. Without knowledge that the Plaintiff had already been deposed, this Court issued an Order on December 17, 2007, adopting Judge Lowe's Order under the standard that Judge Lowe's Order was neither clearly erroneous nor contrary to law. Judge Kahn Order (Dkt. No. 62). The Plaintiff brings this Motion for Reconsideration claiming both that the Court's December 17, 2007 Order contains prejudicial error, and that the Order itself is moot since the deposition was given

while the Objection was pending.

II. Discussion

A. Reconsideration and Objections

Plaintiff claims that this Court's December 17, 2007 Order committed prejudicial errors by deciding "important federal questions in a way that conflicts with relevant decisions of the U.S. Supreme Court, and, U.S. Court of Appeals for the Second Circuit, and their prior rulings." Motion for Reconsideration (Dkt. No. 63 at 2).

Under Fed. R. Civ. P. 72(a), "[t]he district judge to whom the case is assigned shall consider such objections and shall modify or set aside any portion of the magistrate judge's order found to be clearly erroneous or contrary to law." See also Thomas E. Hoar, Inc. v. Sara Lee Corp., 900 F.2d 522, 525 (2d Cir. 1990) (noting that matters concerning discovery are reviewed by the District Court under the "clearly erroneous or contrary to law" standard). This Court found that "Judge Lowe's Order permitting Defendants to take Plaintiff's deposition is neither clearly erroneous nor contrary to law." Order Denying Objections (Dkt. No. 62). The Court finds no conflict with relevant rulings from the U.S. Supreme Court or U.S. Court of Appeals for the Second Circuit.

B. Mootness

Plaintiff seeks a reconsideration of this Court's December 17, 2007 Order on the grounds that the decision of the Court was moot since the deposition had taken place while the Objections were pending. Plaintiff has failed to demonstrate how he might suffer prejudice in this matter. The Court finds that there is no prejudice suffered by Plaintiff. The fact that the Court's December 17, 2007 decision may have been mooted does not change the fact that the Plaintiff has not been prejudiced in this matter. Further, knowledge of the fact that Plaintiff's oral deposition had been

performed would not have altered this Court's December 17, 2007 Order, since the Court would have still found that Judge Lowe's decision was not clearly erroneous or contrary to law, and that the Plaintiff does not suffer any prejudice as a result of giving his deposition.

III. Conclusion

Based on the foregoing discussion, it is hereby

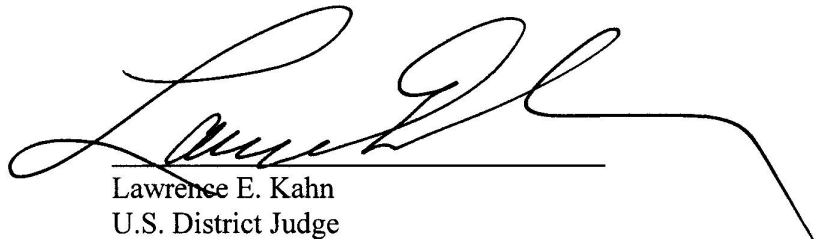
ORDERED, that Plaintiff's Motion for Reconsideration (Dkt. No. 63) is **DENIED**; and it is further

ORDERED, that the December 17, 2007 Order (Dkt. No. 62) is **UPHELD**; and it is further

ORDERED, that the Clerk serve a copy of this order on all parties.

IT IS SO ORDERED.

DATED: June 03, 2008
Albany, New York



Lawrence E. Kahn
U.S. District Judge